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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,104	06/30/2005	Juergen Schmenger	3321	4931
7590 12/17/2007				
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER ELHILO, EISA B	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,104

Applicant(s)

SCHMENGGER ET AL.

Examiner

Eisa B. Elhilo

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/11/2207 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- 1 This action is responsive to the amendment filed on October 11, 2007.
- 2 The cancellation of claims 1-12 is acknowledged. Pending claims are 13-24.
- 3 The terminal disclaimer filed on 10/26, 2007 disclaiming the terminal portion of the patent being reexamined which would extend beyond the expiration date of the copending Application No. 11/705,626 has been reviewed and is accepted. The terminal disclaimer has been recorded.

New ground of rejection

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Satou et al. (US 5017,195) in view of Toumi et al. (US 2004/0166077 A1).

Satou et al. (US' 195) teaches a non-dustable granular dye composition comprising direct dyes (see col. 1, lines 62-65), in a binder (carrier) material of hydroxypropylcellulose and a coating agents of polyvinyl pyrrolidone and oligosaccharides (natural film-formers) as claimed in claims 13-14 and 16-18 (see page 2, lines 12-64). Satou et al. (US' 195) also teaches a method for preparing a dyeing composition by mixing the dye components with the carriers, coating the granular dyes and dissolving the granules in aqueous solution to form the dyeing composition as claimed in claims 20-24 (see col. 2, lines 30-68 and col. 3, lines 1-2).

The instant claims differ from the reference by reciting dyeing composition comprising oxidation dye precursors.

However, Satou et al. (US' 195) teaches a coated non-dustable granular dye composition comprising any kind of dyes (see col. 1, lines 60-65).

Toumi et al. (US' 077 A1) in another analogous art of fiber dyeing formulation, teaches an encapsulation of a water-soluble cosmetic composition comprising direct dyes and oxidation dye precursors (bases and couplers) (see page 5, Examples 1 and 2 and page 6, paragraph, 0113).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of the invention, would be motivated to modify the dyeing composition of Satou et al. (US' 195) by incorporating any coupler in the composition including the claimed species to arrive at the claimed invention because Toumi et al. (US' 077 A1) clearly suggests the use of known oxidation couplers in the encapsulated dyeing composition (see page 6, paragraph, 0113), and, thus, a person of the ordinary skill in the art would be motivated to incorporate these couplers as taught by Toumi et al. in the dyeing composition of Satou et al. and would expect such a composition to have similar properties to those claimed, absent unexpected results.

5 Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Satou et al. (US 5017,195) in view of Toumi et al. (US' 077 A1) and further in view of Miczewski et al. (US 2004/0045101 A1).

The disclosures of Satou et al. (US' 195) and Toumi et al. (US' 077 A1) as described above, do not teach or disclose direct dyes of the claimed species.

However, Satou et al. (US' 195) suggests the use of direct dyes in the dyeing composition (see col. 1, lines 60-65).

Miczewski et al. (US' 101 A1) in another analogous art of fiber dyeing formulation, teaches an encapsulation dyeing composition (see page 3, paragraph, 0052), wherein the composition comprising direct dyes such as Basic Brow 17 as claimed in claim 15 (see page 2, paragraph, 0028).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of the invention, would be motivated to modify the dyeing composition of Satou et al. (US' 195) by incorporating direct dyes as taught by Miczewski et al. to arrive at the claimed invention because Satou et al. teaches an encapsulated dyeing composition comprising direct dyes. Miczewski et al. as a secondary reference, clearly teaches the claimed species of the direct dyes in a capsulated dyeing composition, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed in the absent of contrary.

Response to Applicant's Arguments

6 Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

7 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa Elhilo/
Primary Examiner, A.U. 1796
December 11, 2007